

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES P. GRIPPO

Appeal No. 2006-1328
Application No. 10/379,307

ON BRIEF

Before KIMLIN, PAK and FRANKLIN, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-18.

Claim 1 is illustrative:

1. A dryer sheet enhancer, for improving the effectiveness of using a dryer sheet, said dryer sheet enhancer comprising:

a) a flexible member having a predetermined size and a first predetermined shape, said flexible member being made from a predetermined material;

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b) at least one incision, having a predetermined length, formed through said flexible member at a predetermined location for receiving a portion of a dryer sheet and securing such dryer sheet therein; and

c) an aperture, having a second predetermined shape, formed through said flexible member at each terminal end of said at least one incision.

The examiner relies upon the following references as evidence of obviousness:

Tiegler et al. (Tiegler)	2,264,489	Dec. 2, 1941
Prueher	4,245,752	Jan. 20, 1981
Kingry et al. (Kingry)	6,305,046	Oct. 23, 2001
Mattia et al. (Mattia)	2003/0207785 A1	Nov. 6, 2003

Appellant's claimed invention is directed to a dryer sheet enhancer which secures a dryer sheet that is used in a clothes dryer. The enhancer is a flexible member having at least one incision for receiving and securing a portion of the dryer sheet. Also, an aperture is formed through the flexible member at the terminal end of the incision.

Appealed claims 1-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tiegler in view of Prueher. Claims 1-18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Mattia.

Appellant presents separate arguments for claims 2, 5, 6, 8 and 17. Accordingly, claims 3, 4, 7, 9-16 and 18 stand or fall together with claim 1.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we find that the examiner's rejections are well-founded and supported by the prior art evidence relied upon. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the answer, and we add the following primarily for emphasis.

We consider first the examiner's Section 103 rejection of claims 1-9 over Tiegler in view of Prueher. There is no dispute that Tiegler, like appellant, discloses a flexible member having slits or incisions at predetermined locations of the member. While Tiegler does not teach that the flexible member can be used to receive and secure a dryer sheet, we fully concur with the examiner that the member of Tiegler is fully capable of doing so. As explained by the examiner, the preamble of the appealed claims is merely a statement of intended use which does not serve to structurally distinguish the claimed article from the article disclosed by Tiegler.

As appreciated by the examiner, the flexible member of Tiegler does not have the claimed aperture at the terminal end of the incision. However, we agree with the examiner that Prueher establishes the obviousness of doing so for the purpose of preventing tearing of the member. Again, it is of no moment that

neither Tiegler nor Prueher describes the disclosed articles as a dryer sheet enhancer. Nor is it significant, as urged by appellant, that Tiegler is directed to a bottle support and Prueher is directed to a lid for a drinking container. We subscribe to the examiner's rationale that one of ordinary skill in the art would have understood that Prueher's teaching of using round apertures at the end of slits in flexible members would translate to the slits of Tiegler's flexible member for preventing tears therein. In our view, Prueher establishes the obviousness of utilizing an aperture at the end of an incision or slit in flexible members, in general, for the purpose of preventing tears in the flexible member. We are satisfied that one of ordinary skill in the art would consider the principle underlining the use of an aperture as applicable to all such flexible members, whether they are used as a bottle support, a container lid or a dryer sheet enhancer.

Concerning separately argued claim 5, which recites that the sheet enhancer is "generally dish-like" in shape, we agree with the examiner that the generally round shape of Tiegler's flexible member meets the requirement of being generally dish-like.

Regarding claim 8, appellant maintains that "if the slits in the flexible sheet as taught by Tiegler et al. were terminated

with apertures as taught by Prueher, as suggested by the Examiner, it would probably weaken the fingers formed by the slits design for holding a bottle to the extent that the bottle may not [sic, be] supported properly" (sentence bridging pages 6 and 7 of brief). First, appellant has presented no evidence to support such a speculative assertion. Secondly, we are confident that one of ordinary skill in the art would have found it obvious to design the size of the apertures such that a balance between support and the prevention of tears is effected.

We now turn to the Section 102 rejection of all the appealed claims over Mattia. Mattia, like appellant, discloses a dryer sheet enhancer for a clothes dryer, and we agree with the examiner that the enhancer of Mattia includes a flexible member that meets the requirements of the appealed claims. Figure 4 of Mattia, when read in light of the patent to Kingry that is incorporated by reference, depicts a flexible member having incisions therein with apertures at the end of the incisions. It is the appellant's contention that securement devices 20 of Mattia which extend through the upper layer of the holder 15 and into a cavity, do not meet the claim requirement for forming an incision "through said flexible member." However, we agree with the examiner that the claims on appeal do not require that the

incision pass entirely through one surface of the member and also through the opposite surface of the member. Like the examiner, we find that the incision of Mattia is formed through the flexible member. Also, we find that the securement devices 20 of Mattia, per se, apart from holder 15, meet the requirements of the claimed flexible member. As for appellant's argument that the holders of Mattia are generally described as cylindrical, rectangular or square blocks, and not dish-like in shape as claimed, we concur with the examiner that "[a] dish may have a square or rectangular shape" (page 9 of answer, penultimate paragraph).

Appellant also contends that "[t]here is no teaching in Mattia et al. about the incisions or slots being terminated with an aperture to prevent the plurality of incisions from tearing" (page 10 of brief, second paragraph). However, appellant does not address the examiner's citation of Kingry, incorporated by Mattia, for enhancing the features of Mattia's figure 4. Manifestly, Kingry illustrates apertures at the end of the incisions.

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As a final point, with respect to the Section 103 rejection, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results.

In conclusion, based on the foregoing, and for the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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CHUNG K. PAK)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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BEVERLY A. FRANKLIN)	
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ECK:hh

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